

Memorandum

Date: November 5, 2002
Telephone: ATSS (916) 653-0062

To: John L. Geesman, Presiding Member
Arthur H. Rosenfeld, Associate Member

File: s/tesla/statusreport4

From: California Energy Commission -
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Jack W. Caswell
Energy Commission Project Manager

Subject: **TESLA POWER PROJECT (01-AFC-21) STATUS REPORT #4**

Energy Commission staff held Preliminary Staff Assessment workshops on September 24th and 25th 2002. Staff is scheduling a workshop in mid-November to discuss unresolved issues to include scheduling with the applicant, other parties and agencies. The applicant is requesting that the project move to Evidentiary Hearings as soon as possible. Staff needs the applicant to provide complete data request responses, and agency documents prior to an FSA publication. We intend to publish the FSA thirty days after receiving this information. Staff believes that an updated schedule from the Committee would be helpful. The following information is a summary of the remaining FSA issues.

ISSUES UNRESOLVED

Air Quality, Biological Resources, Land Use, Transmission System Engineering, Visual Resources and Water Resources are the areas of greatest concern at this time.

AIR QUALITY

In other cases currently at the Energy Commission, USEPA has identified a concern about the use of an Emission Reduction Credit (ERC) that was created prior to 1990 unless there is appropriate documentation to justify its use. Staff understands that this documentation has not occurred. If USEPA were to disallow its use, then substitute NOx ERCs in the amount of 21 tons would have to be secured by the applicant.

Staff disagrees with the BAAQMD on the efficacy of using PM₁₀ ERCs from the Altamont Landfill road paving as mitigation. We believe that using dust control to offset combustion related PM₁₀ does not fully mitigate actual project impacts. Additionally, staff does not agree with the air pollution mitigation proposal by the applicant for the San Joaquin Valley air pollution impacts. Without knowing how the Mitigation Agreement funds would be used staff believes that a substantial residual liability of PM₁₀ and ozone precursors (NOx and VOC) will not be fully mitigated. However, the San Joaquin Air Pollution Control District is satisfied with the mitigation proposal. Staff held a workshop to address the project concerns but was unable to resolve the differences on these issues. Staff intends to go forward with the FSA once the BAAQMD publishes a Final Determination of Compliance (FDOC). The BAAQMD indicated to staff the FDOC would not be provided until mid-December 2002.

BIOLOGICAL RESOURCES

The United States Fish & Wildlife Service (USFWS) and California Department of Fish & Game (CDFG) have raised concerns with the direct and cumulative adverse impacts of the proposed project to essential San Joaquin kit fox habitat in the project area and region. The applicant has consulted with USFWS and CDFG to determine final strategies for land mitigation measures that would reduce the impacts of the project to less than significant levels for the kit fox. Additionally, the USFWS has expressed concern for the Buena Vista Lake shrew that may be adversely impacted by the proposed water transfer supply identified in the AFC. The USFWS is reviewing the Draft EIR being circulated by the Rio-Bravo Water District in order to assess the possible impacts to the shrew. The USFWS will not complete its Biological Opinion until the applicant has identified adequate habitat mitigation in their Biological Assessment. Based on conversations with the applicant and a meeting held with the USFWS, staff is uncertain when the required information will be provided.

LAND USE

The applicant has not provided evidence that the current owners of the project site will be granted a cancellation from their Williamson Act Contract, which needs to be approved by the Alameda County Board of Supervisors. Prior to the board action, the Alameda County Planning Department needs the staff FSA in order to prepare a CEQA document on the proposed cancellation. The proposed cancellation is subject to a six-month statutory limitation period in which it may be challenged. This limitation period may affect the Commission's time frame on the Presiding Members Proposed Decision. The applicant has committed to provide written evidence on the cancellation prior to the close of evidentiary hearings. Staff will provide an FSA with conditions addressing the above concerns.

TRANSMISSION SYSTEM ENGINEERING

The need for additional system impact studies was identified in data requests starting in February of 2002. A revised System Impact Study will not be completed by Pacific Gas and Electric Company until mid-December 2002. Staff will require this study in order to evaluate the impacts of the power plant project on the transmission line system.

VISUAL RESOURCES

Staff has identified significant visual impacts and is developing landscaping guidelines with the assistance of the USFWS so the applicant may prepare a landscape plan that would reduce the project impacts to less than significant. Final landscape concerns will be addressed in a workshop in mid-November.

WATER RESOURCES

Staff is evaluating the applicant's proposed water supply and the Rio-Bravo Water District's EIR associated with the transfer, exchange and banking of water. The EIR was received on October 30th, and will require review by staff, Department of Water Resources and USFWS prior to the publication of the FSA.

Staff has evaluated water supply alternatives and has provided a document as an appendix to the Soil and Water PSA section, titled Water Supply and Cooling Options. Based on this analysis, staff believes reclaimed water from the City of Tracy to be

environmentally preferable and economically feasible and is recommending its use. Dry cooling is also a potentially viable economic option in staff's opinion due to water delivery reliability issues associated with the California Aqueduct and will be analyzed in the FSA. Staff is holding additional meetings with the Department of Water Resources to evaluate the reliability of the supply of water from the aqueduct and issues related to alternative costs and feasibility brought up in the September PSA workshop.

DATA RESPONSES AND SUPPLEMENTAL FILINGS

The applicant continues to gather additional information for water resources in response to earlier data requests and a September workshop discussion. Staff has not received complete answers to the requests. The applicant filed supplemental responses to data requests on August 24, 2002 and on several dates after the workshops. Complete responses are still pending.

FUTURE PUBLICATIONS AND EVENTS

Staff plans to publish a Final Staff Assessment thirty days after receiving complete information and documentation. A workshop will be scheduled in mid-November providing the applicant and others an opportunity to discuss the completeness of responses, tasks the applicant may need to accomplish prior to the FSA publication and time frames for the tasks to be completed. Additionally the workshop will provide an opportunity to update the FSA publication schedule.

SUMMARY OF FSA PUBLICATION REQUIREMENTS

We believe the following documentation from the applicant and appropriate agencies will be required for the FSA publication. Staff will provide the FSA thirty days after the last piece of information has been provided.

- A Final Determination of Compliance (FDOC) from the BAAQMD (mid-December),
- Evidence of an approved mitigation plan for biological impacts from the USFWS and CDFG, and an amended Biological Assessment that has been accepted as complete by USFWS (date uncertain),
- Complete information on the water exchange proposal as requested by staff in data requests and workshops (date uncertain),
- A revised and complete Transmission Impact Study from PG&E (mid-December 2002),
- A Visual Resources landscaping mitigation plan including photo simulations of KOP's 1, 2, 3, and 7 showing the revised landscaping concepts and,
- Completion of data responses from earlier data requests, (date uncertain),
 1. Biological Resources, data request #38
 2. Water Resources, data request, #328.

cc: Telsa Power Project Proof of Service list
Web Master